

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 8, 2003

GSBCA 16089-RELO

In the Matter of CHARLES A. GARDNER

Charles A. Gardner, Tarrytown, NY, Claimant.

Mary Lanham, Chief, Travel Payment Section, Program Support Center, Department of Health and Human Services, Rockville, MD, appearing for Department of Health and Human Services.

GOODMAN, Board Judge.

Claimant, Charles A. Gardner, is an employee of the Department of Health and Human Services. He has asked this Board to review a decision of the agency denying reimbursement of costs incurred as the result of his permanent change of station (PCS) move.

Factual Background

On November 20, 2002, claimant returned from a four-year assignment in New Delhi, India, where he served as the agency representative to South Asia. His travel orders authorized reimbursement of sixty days of temporary quarters subsistence expenses (TQSE).

Upon his return, claimant and his family stayed in a hotel in Bethesda, Maryland, from November 21 through December 6, 2002, and, according to claimant, he then began to search for less expensive temporary housing. Claimant states:

We then moved to a tiny apartment as a temporary base from which to search for and purchase a house. We left the hotel on December 6, thinking that we were saving the Government money by getting out so quickly. We accepted a long-term lease because the lessor offered such a good financial deal, knowing we would break the lease when we found our permanent home. Before we made this decision, I contacted an appropriate authority in the Government. She assured me that shifting to an apartment would not affect our living and housing allowances.

The apartment lease to which claimant refers was a fourteen-month lease which commenced on December 6, 2002. Claimant states further:

I was not informed of the little nuance regarding month-to-month versus longer-term leases. If we had known this, we would DEFINITELY have signed a month-to-month lease. We still intend to purchase a permanent home this summer.

I have acted in good faith, even tried to save the government money. If we had stayed in our hotel for the full two months allowed, this would have cost the US Government an additional \$6,750 (45 additional days at \$150.00/day). Shifting to an apartment reduced that to less than \$3,000. No matter the terms of our lease, we still have huge (and exactly the same) expenses from living without our household effects (delivered on February 19, 2003).

On February 19, 2003, claimant had delivered to the apartment two of five pallets of his household goods (HHG). The remaining three pallets were placed in storage.

Claimant submitted a travel voucher for reimbursement of housing costs, meals and incidental expenses for the sixty day period November 21, 2002, through January 20, 2003. The agency reimbursed expenses for November 21 through December 5, 2002, while claimant and his family were living in the hotel, but denied reimbursement for \$4588.20 of expenses incurred while living in the apartment, because the agency determined that the apartment was permanent quarters and not temporary quarters.

In response to the agency's denial, claimant states:

I hope you will reconsider this decision to deny our claim for temporary housing and living allowances for my family (including our new baby born on January 7). We were misinformed at a critical decision point. If anyone cares to visit our little two-bedroom apartment (one bedroom of which is used as a home office), now with four occupants, you will see immediately that it cannot be a permanent residence. Half of our HHG is still in storage.

In July 2003, claimant was offered a position with a non-governmental agency and moved to New York, breaking his fourteen-month lease. He submits this information as further support that the apartment was not meant to be permanent.

Discussion

The Federal Travel Regulation (FTR) applicable at the time of claimant's PCS provides that the term "temporary quarters" refers to lodging obtained from private or commercial sources for the purpose of occupying it temporarily. 41 CFR 302-6.1 (2002). A determination as to what constitutes temporary quarters is not susceptible of any precise definition, but must be based upon the facts and circumstances involved in each case. The determination as to whether the quarters were initially temporary in nature is based on the intent of the employee at the time he moves into the dwelling. Kim R. Klotz, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789. Factors to be considered in determining that intent

include the duration of the lease, the movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, the attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters. 41 CFR 302-6.305 (2002).

Generally, the execution of a long term lease for a dwelling by an employee at his new duty station is a clear indication that the employee intends to occupy the rented quarters on other than a temporary basis. However, it is necessary to examine the remaining factors in order to ascertain the intent of the employee at the time he initially occupied the quarters. Thus, the fourteen-month lease executed by claimant does not necessarily disqualify claimant from reimbursement of TQSE. Paul E. Dyer, GSBCA 13802-RELO, 97-1 BCA ¶ 28,936.

The agency offers no support for deeming claimant's apartment as permanent quarters other than the long term lease. Under similar circumstances, when an employee occupied a townhouse which was obviously not large enough for his family or his HHG, with the intent not to occupy it permanently, we found that the employee had moved into temporary quarters despite the execution of a long term lease. In that case, claimant had stored his HHG in every conceivable place in the townhouse. Stephen A. Monks, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650. As we stated in that case:

In Carl J. Zulick, 67 Comp. Gen. 585 (1988), where the employee moved his household goods into a residence but never unpacked most of them, the Comptroller General held that fact did not warrant a conclusion of intent to occupy permanently. We believe that conclusion applies equally well to claimant in this case.

00-1 BCA at 151,344.

In the instant case, claimant only moved two of five pallets of HHG into the apartment and stored the remainder. The two bedroom apartment held four occupants - claimant, his wife, and two children. Accordingly, despite the fourteen-month lease, we are persuaded that claimant intended the apartment to be only a temporary residence until he could find suitable permanent quarters.

Decision

The claim is granted.

ALLAN H. GOODMAN
Board Judge